



July 2, 2013

Freedom of Information Officer
U.S. EPA Region 5 (MI-9J)
77 West Jackson Blvd.
Chicago, IL 60604-3590

Re: Freedom of Information Act Request

Dear FOIA Officer,

Please accept this Freedom of Information Act ("FOIA") request on behalf of the Center for Biological Diversity ("Center"). The Center works through science, law and creative media to secure a future for all species, great or small, hovering on the brink of extinction. The Center has offices in a number of states, including Duluth, Minnesota, and has more than 500,000 members and online activists. The Center has hundreds of members who reside and/or recreate in northern Wisconsin.

Pursuant to FOIA, 5 U.S.C. § 552, the Center requests the following information:

- (1) all documents and records related to Gogebic Taconite, LLC's exploratory drilling in northern Wisconsin, including all communications between the EPA and Gogebic Taconite, LLC, and all communications between the EPA and the Wisconsin Department of Natural Resources;
- (2) all documents and records related to Gogebic Taconite, LLC's bulk sampling plan in northern Wisconsin, including all communications between the EPA and Gogebic Taconite, LLC, and all communications between the EPA and the Wisconsin Department of Natural Resources;
- (3) all documents and records related to Gogebic Taconite, LLC's potential iron ore mine project in northern Wisconsin, including all communications between the EPA and Gogebic Taconite, LLC, and all communications between the EPA and the Wisconsin Department of Natural Resources; and
- (4) all documents and records related to Wisconsin's new mining bill that was signed into law in 2013, including all communications between the EPA and any of Wisconsin's state agencies, legislature, and/or governor.

The terms "documents and records" in this request includes all forms of written or recorded matter, including correspondence, memoranda, records, e-mail, data sheets, reports, evaluations, summaries, opinions, journals, calendars, statistical records, notes,

recordings of telephone calls, and other communications, including but not limited to, notes, memoranda and other writings of or relating to telephone conversations and conferences, minutes and notes of transcription of all meetings and other communications of any type, and any other information that is stored electronically, and that can be retrieved in printed, graphic, or audio form, including, but not limited to, information stored in the memory of a computer device, data stored on removable magnetic or optical media, e-mail, data used for electronic interchanges, digitized pictures and audio, and voice mail.

If the EPA deems a portion of a responsive document to be exempt from release, FOIA requires any releasable portion to be segregated and disclosed. 5 U.S.C. § 552(b). Please explain any redactions by reference to a specific FOIA exemption.

REQUEST FOR FEE-WAIVER

The Center requests that EPA waive all fees in connection with this matter. The Center meets the two-pronged test under FOIA for a fee-waiver, 5 U.S.C. § 552(a)(4)(A)(iii); *see also Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003).

FOIA carries a presumption of disclosure and was designed specifically to allow non-profit, public interest groups like the Center access to government documents without the payment of fees. FOIA “is to be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecol. Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987). Further, the purpose of the FOIA fee waiver provision was “to remove the roadblocks and technicalities which have been used by various Federal agencies to deny waivers or reductions of fees under the FOIA.” *Id.*, *see also Better Gov’t Ass’n v. Dep’t of State*, 780 F.2d 86, 93-94 (D.C. Cir. 1986) (the fee waiver provision “prevent[s] government agencies from using high fees to discourage certain types of requesters and requests,” including requests from journalists, scholars, and non-profit public interest groups); 132 Cong. Rec. S. 14298 (“agencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information”) (statement of Sen. Leahy). Accordingly, FOIA is specifically intended to facilitate access to agency records by “watchdog” organizations that use FOIA to monitor government activities.

- I. Disclosure of this information is in the public interest because it will significantly contribute to public understanding of the operations or activities of government.

The requested information will significantly contribute to the public’s understanding of EPA’s oversight and the potential environmental impacts of mining in Wisconsin, including Gogebic’s proposed mine in northern Wisconsin. 5 U.S.C. § 552(a)(4)(iii).

- A. The subject of the request concerns “the operations and activities of the government.”

The subject matter of this request relates to EPA oversight of mining projects in Wisconsin, including Gogebic's proposed mine project in northern Wisconsin.

- B. The disclosure is "likely to contribute" to an understanding of government operations or activities (the informative value of the information to be disclosed).

The requested documents will provide information regarding the EPA's review and oversight of mining in Wisconsin, including Gogebic's proposed mine in northern Wisconsin and its potential impacts on water quality, groundwater, and wetlands.

- C. The disclosure of the requested information will contribute to "public understanding."

The information requested will help provide the Center and the public with a better understanding of the activities, policies, and decision-making processes of the EPA concerning mining in the state of Wisconsin, including Gogebic's potential mine in northern Wisconsin. The requested documents are not currently in the public domain and will potentially provide new information concerning EPA's review and assessment of the new state mining law and EPA's oversight of the Gogebic mine proposal in northern Wisconsin.

- D. The disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

The Center is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to environmental issues. The Center has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through FOIA.

In consistently granting the Center's fee waivers, agencies have recognized that: (1) the Center's requested information contributes significantly to the public understanding of the operations or activities of the government; (2) the Center's requested information enhances the public's understanding to a greater degree than currently exists; (3) the Center possesses the expertise to explain the requested information to the public; (4) the Center possesses the ability to disseminate the requested information to the general public; and (5) that the news media recognizes that the Center is an established expert in the field of imperiled species and environmental impacts.

The Center members' record of active participation in oversight of governmental agency activities and their consistent contribution to the public's understanding of agency activities as compared to the level of public understanding prior to disclosure are well established. In determining whether the disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester

will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject. *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2d Cir. 1994).

The Center provides information we receive from FOIA requests to the public in a variety of formats, including newsletters, web publications, and action alerts. We are willing to distribute the raw information we receive from FOIA requests, but we also gather information of potential, use editorial skills to turn the raw materials into a distinct work, and distributes that work to the public. Our publications provide information not only to our membership, but also to the memberships of most other conservation organizations, locally as well as nationally. Our informational publications and our website also contribute information to public media outlets. See *Forest Guardians v. DOI*, 416 F.3d 1173, 1180 (10th Cir. 2005).

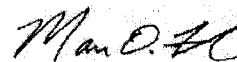
II. Obtaining the information is of no commercial interest to the Center.

Access to government documents, disclosure forms, and similar materials through FOIA requests is essential to the Center's role of educating the general public. The Center, a non-profit organization, has no commercial interest and will realize no commercial benefit from the release of the requested information.

I hope that this letter has demonstrated to your satisfaction that the Center qualifies for a full fee-waiver, and that you will promptly begin to collect the requested material. I also request that, where possible, documents be provided electronically to avoid copy expense and to further expedite our receipt of the materials. In the event the Center's fee waiver is partially or completely denied, the Center is willing to pay any fees associated with this request up to \$100.00.

Thank you for your consideration, and please contact me at the phone number or email address below if you have any questions about this request.

Sincerely,



Marc Fink
Center for Biological Diversity
209 East 7th St.
Duluth, Minnesota 55805
218-464-0539
mfink@biologicaldiversity.org